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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/155,041	03/04/1999	DAVID GEORGE HALLEY	FA/153A	7973

7590 12/10/2002  
GARY A SAMUELS  
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NEWARK, DE 197149206

EXAMINER
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BEFUMO, JENNA LEIGH

ART UNIT	PAPER NUMBER
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1771

DATE MAILED: 12/10/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/155,041

Applicant(s)

HALLEY ET AL.

Examiner

Jenna-Leigh Befumo

Art Unit

1771

A9-17

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1) ☒ Responsive to communication(s) filed on 03 October 2002.

2a) ☐ This action is **FINAL**.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4) ☒ Claim(s) 1-17, 19-29 and 58-61 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.

6) ☒ Claim(s) 1-17, 19-21, 23-29 and 58-61 is/are rejected.

7) ☒ Claim(s) 22 is/are objected to.

8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☒ The drawing(s) filed on 06 May 1999 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☒ All b) ☐ Some \* c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☒ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.

4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other:

### **DETAILED ACTION**

#### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on August 26, 2002 has been entered.

#### ***Response to Amendment***

2. Amendment B, submitted as Paper No. 16 on October 3, 2002, has been entered. Claim 18 has been cancelled. Claims 1, 19, 20, and 28 have been amended and claims 58 – 61 have been added. Therefore, the pending claims are 1 – 17, 19 – 29, and 58 – 61.

3. Amendment B and the Applicant's arguments (Amendment B, pages 3 – 4) are sufficient to overcome the 35 USC 103 rejections based on Bauer et al. (5,626,949) in view of Henn et al. (5,026,591) since Bauer et al. discloses applying the polymeric dots to the woven fabric layer and fails to teach applying the polymeric dots to a water vapor permeable, porous membrane.

#### ***Double Patenting***

4. Claims 1 – 17, 19 – 21, 23 – 29, and 58 – 61 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 5, 8, 11, 14 – 20, and 23 of U.S. Patent No. 5,948,707. Although the conflicting claims are not identical, they are not patentably distinct from each other because the scope of the claims in this application, i.e., a composite fabric comprising a water vapor permeable, porous membrane with a fabric layer attached to a first side of the membrane and a discontinuous polymeric dot layer attached to the second side of the membrane, overlaps the composite fabric comprising a water vapor permeable, porous membrane attached to a

fabric layer on a first side of the membrane and a discontinuous polymeric layer on the second side of the membrane.

*Allowable Subject Matter*

5. Claim 22 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.
6. The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to teach or fairly suggest applying a discontinuous polymeric layer having an elastic modulus of greater than  $5.5 \text{ N/mm}^2$  to a water-vapor permeable, porous membrane layer to protect the membrane layer from abrasion while at the same time maintaining the breathability of the porous layer.


*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo  
December 3, 2002



TERREL MORRIS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700